(27)

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Division Bench: Hon'ble Shri L.C. Bhadoo &**
**Hon'ble Shri Sunil Kumar Sinha,JJ.**

**M.A.(C) No. 984 of 2007**

Kamlesh Mishra

**Versus**

Amin Khan & Others

**ORDER**

Order for consideration

Sd/-
Judge
28.08.2007

**Hon'ble Shri L.C. Bhadoo, J.**

I agree

Sd/-
L.C. Bhadoo
Judge

Post for Order: 30.08.2007

Sd/-
Sunil Kumar Sinha
Judge

(26)

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**M.A.(C) No. 984 of 2007**

**APPELLANT CLAIMANT** Kamlesh Mishra S/o- Shaktinath Mishra, Aged about 34 years, R/o- Village Chaknaar, P.S. Gandai, Tehsil- Chhuiekhadan, Distt.- Rajnandgaon (C.G.)

**Versus**

**RESPONDENTS**

1 Amin Khan, S/o Kalam Khan, Aged about 22 years, Occupation- Driver, R/o Radhika Nagar, Ward No-1 Dongargarh, Distt.- Rajnandgoan

2 Akhay Jain, S/o Vimalchand Jain, R/o Durga Takies Road Rajnandgoan

3 National Insurance Co. Ltd., Branch Office, Kamti Line Rajnandgaon

4 Anil Kumar, S/o Paltanram Sinha, R/o- Chaknaar, P.O.-Atriya, At-present village Namrada, Tehsil- Chhuiekhadan, Distt.- Rajnandgoan

5 Bajaj Alliance General Insurance Co. Ltd., Shivmohan Bhawan, Vidhansabha Road, Pandritarai, Raipur (C.G.)

**(APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988)**

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**Appearance:**

Shri H.S. Ahluwalia, counsel for the appellant.

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**DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI SUNIL KUMAR SINHA, JJ.**

**ORDER**
**(30.08.2007)**

Following Order of the Court was delivered by **Sunil Kumar Sinha, J.**

**(1)** This appeal is directed against the award dated 10.5.2007 passed by the Additional Motor Accident Claims Tribunal, Khairagarh in MACC No. 33/2006, whereby, the Tribunal has

awarded a sum of Rs.48,769/- along with @ 9% per annum from the date of filing of the Claim Petition i.e. from 10.4.2006 till its realization, on account of personal injuries sustained by the claimant/appellant.

(2) The Claimant/appellant has filed this appeal for enhancement of the award.

(3) The brief facts are that on 7.2.2006, the Minidor of respondent No.4 bearing registration No. CG 08 B-0938, in which, the appellant was traveling, met with an accident. The appellant pleaded that the accident was caused by rash and negligent driving of Tata Indica vehicle bearing registration No. CG 04 ZD 7585, driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. It was also pleaded that the Minidor was driven by the owner himself (respondent No.4) and it was insured with respondent No.5. Respondent No.2 denied the claim saying that the accident was caused on account of rash and negligent driving of Minidor by respondent No.4. Respondent No.3 i.e. insurer of Tata Indica Car pleaded that the drivers of both the vehicles were not having valid licenses and they were driving the vehicles in breach of policies, therefore, the said respondent was not responsible to pay the amount of compensation. Respondent No. 4 pleaded that the accident had occurred on account of rash and negligent driving of the Tata Indica vehicle, whereas respondent No.5, the insurer of Minidor pleaded that the claimant would not be classified as a third party, as the claimant was traveling as a passenger in Minidor, which was registered as goods vehicle, therefore, if the liability is fixed on account of rash and negligent driving of the Minidor, the owner shall be responsible for the same.

(4) The Claims Tribunal, after recording the evidence of all the parties, recorded a finding that the accident was caused due to rash and negligent driving of the Minidor by respondent No.4. It

also recorded a finding that since the driver of the Minidor i.e. respondent No.4 was driving the Minidor without having the valid license and the claimant was traveling as gratuitous passenger in the said Minidor, which was registered and insured as a goods vehicle, the Insurance Company of Minidor would not be responsible to pay the amount of compensation and had directed for payment of amount of compensation by respondent No.4 i.e. owner of the Minidor.

**(5)** Learned counsel for the appellant has pressed this appeal only on the ground of quantum of award. His submission was that the quantum has been assessed on the lower side and looking to the injuries sustained by the appellant, the claim filed before the Tribunal should have been allowed in full.

**(6)** We have heard the learned counsel for the appellant at length and have perused the records of the Misc. Appeal.

**(7)** So far as injuries suffered by the appellant is concerned, the appellant has stated that he was told that his 3rd, 4th, 5th, 6th & 7th ribs were fractured and for that, he was admitted for the 5 days in Gyatri Hospital, Durg. According to the appellant, he was running a TV & Tape Recorder repairing shop and he was also selling Electronics items and was earning Rs.9,000/- per month from the said shop. Besides the above, he was also running S.T.D.-P.C.0 and was earning about Rs.1,500-2,000/- per month from S.T.D.-P.C.O. and in this manner, he was earning Rs.12-13,000/- per month. He has further deposed that he was under treatment for about 2-2 ½ months. The appellant had not filed any documentary evidence pertaining to his earning from shop like income tax or sale-tax certificates, therefore, the Tribunal did not rely on his evidence pertaining to the income from Electronic repairing shop. However for the S.T.D.-P.C.O., a bill of Rs.1,692/- (Ex.-P/8) was filed, which was believed by the Tribunal and believing that the appellant had suffered loss of earning as his shop had to remain closed for two

months, the Tribunal assessed an amount of Rs.25,000/- in lump sum towards the loss of earning and pains and suffering and expenditure incurred for keeping an attendant with the appellant during this period. Apart from the above, the Tribunal allowed the amount of all medical bills filed by the appellant i.e. Ex.-P/9 to Ex.-P/12 and Ex.-P/14 to Ex.-P/21 amounting to Rs.16,269/-. Besides the above, the Tribunal also awarded a sum of Rs.7,500/- as per bill Ex.-P/13, which was filed on account of expenditure incurred in conveyance of the appellant for treatment after his discharged from the said hospital after 5 days. In this manner, a total sum of Rs.48,769/- has been awarded to the appellant for the said injuries sustained by him.

**(8)** The appellant had also produced a certificate Ex.-P/25, according to which, he had sustained permanent disablement to the extent of 35%. In this regard, Dr. R. Sadani (AW-3) was examined, who deposed that as a member of District Medical Board, he had examined the injured on 20.4.2006 and had assessed the disability and issued the certificate. In the cross-examination, he admitted that he was not an orthopedition and Dr. Moti Ramani was also not an orthopedition. He also admitted that there is no mention about the fractures in the certificate Ex.-P/25. He had further admitted that the disablement certificates are issued after 6 months of the accident because there is a chance of reduction of percentage of disablement after the treatment. He also admitted that the word "T" has been written after "35%" in the certificate, which indicates that on the date of issuance of certificate, the patient was under treatment. Appreciating all this, the Tribunal has not based assessment of quantum on the certificate and has assessed the same as indicated supra.

**(9)** After hearing the learned counsel for the appellant and after considering the contents of the impugned award, it does not appear to us that the quantum of damages has either been wrongly assessed or it has been assessed on the lower side. The

Tribunal has allowed all the medical bills as also the bill of expenditure incurred on account of conveyance and in addition to that it has awarded lump sum amount of Rs.25,000/- for loss of earning, physical and mental agony and on account of keeping an attendant.

(10) In the matter of ***State of Haryana and Another –Vs- Jasbir Kaur and Others, (2003) 7 SCC 484***, the Apex Court held in Para-7 that

> "7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the

background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

**(11)** On above principles, in our considered view, the amount of compensation is fair, reasonable, just and proper. We do not find any substance in this appeal filed for enhancement of compensation already awarded to the appellant by the Claims Tribunal. The appeal is liable to be dismissed and is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

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